

Judge Lasnik

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

UNITED STATES OF AMERICA,

Plaintiff,

v.

ROBERT C. ARANT, individually, and
dba Olympic Business Systems, LLC,
Defendants.

No. CV07-509L

UNITED STATES' MOTION TO
CONVERT PRELIMINARY
INJUNCTION TO A PERMANENT
INJUNCTION AND FOR SUMMARY
JUDGMENT

NOTE FOR: March 14, 2008

Question Presented

Because material facts are undisputed, should this Court convert the preliminary injunction to a permanent injunction and enter summary judgment?

Factual and Procedural Background

On April 9, 2007, the United States file an ex parte motion for a temporary restraining order, seeking to enjoin Arant from operating Olympic Business Systems LLC, an illegal warehouse bank used by Arant's customers to hide their income, assets, and identities from the IRS. As part of this motion, the United States submitted the declaration of IRS Revenue Agent Susan Killingsworth.¹ In this declaration, Killingsworth described how since November of 2002, Arant has promoted and marketed

¹Declaration of IRS Revenue Agent Susan Killingsworth, Docket No. 6, April 10, 2007.

1 a “warehouse banking” scheme used to help his customers to evade federal taxes and to
 2 hide their income, assets, and identities from the IRS.² Killingsworth attached to her
 3 declaration documents from Olympic’s now-defunct website, olympicbookkeeping.com,
 4 detailing how Olympic was structured so that customers could use the bank to hide their
 5 income, assets, and identities from the IRS.³ Killingsworth also discussed the many
 6 Olympic documents sending false and unequivocal messages to Olympic’s customers that
 7 they could use this bank to avoid the IRS.⁴ Killingsworth also described actual customers
 8 who used Olympic’s bank to under-report and hide their income through the Olympic
 9 warehouse banking scheme.⁵ Killingsworth also discussed how the Olympic warehouse
 10 banking scheme prevents the IRS from identifying Olympic’s customers, identifying
 11 customers’ sources of income and expenditures, and levying on their accounts for unpaid
 12 federal taxes.⁶ As a result, the IRS has had to take extraordinary efforts to identify
 13 Olympic’s customers and to determine their true income.⁷

14 On April 17, 2007, this Court issued an ex parte temporary restraining order
 15 enjoining Arant from operating this warehouse bank. The Court also set a preliminary-
 16 injunction hearing on April 27, 2007.

17 At the April 27th preliminary-injunction hearing, which Arant attended,
 18 Killingsworth testified regarding the Olympic warehouse banking scheme.⁸ The United
 19 States also introduced 73 documents into evidence,⁹ including those showing that

21 ²*Id.* at ¶ 10, p. 2.

22 ³*Id.* at ¶¶ 13-44, Ex. 1.

23 ⁴*Id.*, Ex. 1.

24 ⁵*Id.* at 53-63.

25 ⁶*Id.* at ¶¶ 64-66.

26 ⁷*Id.* at ¶ 76.

27 ⁸Minute Order, Docket No. 16, May 2, 2007.

28 ⁹*Id.*

Olympic operates its warehouse banks through six accounts in three commercial banks. The United States also introduced into evidence documents establishing that in order to hide its illegal activities, Olympic operates through alter egos and nominees such as “Atlas Group.” The United States also introduced into evidence documents establishing that, after learning of the IRS’s investigation, Arant directed customers to other entities with identical (and thus highly suspicious) acronyms, such as “Oasis Business Systems” and “Osprey Business Systems,” and which used banking forms identical to those used by Olympic. The United States also submitted an affidavit of an employee of Town Center Bank in Portland, Oregon establishing that Arant violated the temporary restraining order by attempting to withdraw Olympic funds from this bank. Arant did not testify, call any witnesses, or offer any evidence to rebut the United States’ case.

After hearing the testimony of the IRS revenue agent who investigated Olympic, reviewing the 73 documents submitted by the United States, and considering the arguments of Arant and the government’s counsel, the Court made, in Arant’s presence, extensive oral findings that Arant operates the Olympic warehouse bank through various bank accounts and shell entities. The Court then entered an order converting the temporary restraining order into a preliminary injunction, finding that Arant “attempted to withdraw funds from Town Center Bank, in violation of the temporary restraining order.”¹⁰ Despite the Court’s finding that he had violated a court order, on May 10, 2007, a few weeks after the preliminary injunction was entered, Arant demanded that the Bank of America turn over Olympic’s funds,¹¹ which the bank refused to do.¹²

Arant has never contested the factual basis for the orders entered by the Court. Instead, Arant has repeatedly filed frivolous tax-protestor pleadings and attempted to

¹⁰Preliminary Injunction, Docket No. 14, April 27, 2007.

¹¹Pahl Dec. ¶¶ 3-4, Ex. 2.

¹²*Id.*

1 retrieve Olympic funds that are now owed to the United States.¹³ For example, Arant
 2 filed a motion for recusal, attaching a criminal complaint to the FBI regarding Chief
 3 Judge Lasnik and a demand that a King County grand jury be empaneled to investigate
 4 alleged felonies committed by the government's counsel.¹⁴ Arant's Motion to Dismiss
 5 also asserted that this Court has abandoned "all standards of due process and civil polity
 6 itself, merely to serve the lowliest of corrupt and criminally insane public servants."¹⁵

7 Arant also brought a motion for "curative instruction," seeking a court ruling
 8 permitting him to make a citizen's arrest of the government's counsel in the courtroom
 9 and bring arms into the courtroom if necessary to effectuate this arrest,¹⁶ which this Court
 10 denied. Asserting that this Court had failed to protect his constitutional rights, Arant then
 11 brought suit in King County Superior Court, seeking a declaratory judgment that he be
 12 permitted to use "any such arms and force as used by police" to arrest the government's
 13 counsel.¹⁷ After the government's counsel was served at his residence with the complaint,
 14 the United States removed the case to this Court.¹⁸

15 The Complaint, however frivolous, demonstrates that Arant does not contest the
 16 factual basis for the Court's injunction orders, only the *legal authority* for the
 17 government's action: "Despite a credible and well-founded challenge in U.S. District
 18 Court made by Arant, Defendants are unable to provide proof of a statutory basis for their
 19 action against Arant."¹⁹

21 ¹³As set forth more fully in the United States' Motion for Disbursement of Olympic's
 22 Assets, the IRS has assessed penalties against Olympic under 26 U.S.C. § 6700 in the
 amount of \$252,000.

23 ¹⁴Motion for Recusal, Docket No. 36, October 29, 2007.

24 ¹⁵Motion to Dismiss for Failure to State a Claim, Docket No. 41, Dec. 28, 2007, at 13.

25 ¹⁶Motion for Curative Instruction, Docket No. 32, Aug. 7, 2007.

26 ¹⁷*Myrland et al v. Pahl et al*, 2:08-cv-00017-RAJ (W.D. Wash. Jan. 7, 2008), Docket
 27 No. 1, Attachment No. 1, Exhibit A at 2, 4-5.

28 ¹⁸*Id.*

¹⁹*Id.*, Exhibit A at 3-5.

1 This Court, in entering the ex parte temporary restraining order and preliminary
2 injunction, set forth the statutory bases for the government's action:

3 26 U.S.C. § 7408(a) provides that the United States may file an action to
4 enjoin any person from engaging in conduct that violates 26 U.S.C. § 6700
5 and 6700. Section 6700 imposes a monetary penalty on any person who
6 organizes, promotes, or sells a "partnership or other entity" or "any other
plan or arrangement" and in connection therewith makes or furnishes a
statement about the tax consequences to participants which he knows, or
has reason to know, is false or fraudulent. 26 U.S.C. §6701 (a)(2)(A).²⁰

7 Because Arant has not contested any factual allegations and the Court has already
8 determined the statutory authority on which the government's claim is based, the United
9 States' summary-judgment motion should be granted.

10 Legal Argument

11 Summary judgment is appropriate where the moving party demonstrates that there
12 is no genuine issue of material fact as to the existence of an essential element of the
13 nonmoving party's case on which the nonmoving party would bear the burden of proof at
14 trial.²¹ The moving party always bears the initial responsibility of informing the district
15 court of the basis for its motion, and identifying those portions of "the pleadings,
16 depositions, answers to interrogatories, and admissions on file, together with the
17 affidavits, if any," which it believes demonstrate the absence of a genuine issue of
18 material fact.²²

19 A fact is "material" for purposes of a motion for summary judgment where proof
20 of that fact "would have [the] effect of establishing or refuting one of the essential
21 elements of a cause of action or defense asserted by the parties."²³ A dispute over a
22 material fact is genuine "if the evidence is such that a reasonable jury could return a
23

24 ²⁰Temporary Restraining Order, Docket No. 9, April 17, 2007; Preliminary Injunction,
25 Docket No. 14, April 27, 2007.

26 ²¹*Celotex Corp. v. Catrett*, 477 U.S. 317, 322 (1986).

27 ²²*Id.* at 323.

28 ²³*Kendall v. Hoover Co.*, 751 F.2d 171, 174 (6th Cir.1984) (quoting Black's Law
Dictionary 881 (6th ed.1979)) (citations omitted).

1 verdict for the nonmoving party.”²⁴ Conversely, where a reasonable jury could not find
 2 for the nonmoving party, there is no genuine issue of material fact for trial.²⁵ In making
 3 this evaluation, the court must examine the evidence and draw all reasonable inferences in
 4 favor of the non-moving party.²⁶

5 If this burden is met by the moving party, the non-moving party's failure to make a
 6 showing that is “sufficient to establish the existence of an element essential to that party's
 7 case, and on which that party will bear the burden of proof at trial” will mandate the entry
 8 of summary judgment.²⁷ The non-moving party may not rest upon the mere allegations
 9 or denials of his pleadings, but the response, by affidavits or as otherwise provided in
 10 Rule 56, must set forth specific facts which demonstrate that there is a genuine issue for
 11 trial. Fed.R.Civ.P. 56(e). The rule requires the non-moving party to introduce “evidence
 12 of evidentiary quality” demonstrating the existence of a material fact.²⁸

13 As noted above, in moving for summary judgment, the government relies on all
 14 evidence received at the preliminary-injunction hearing, which formed the basis for this
 15 Court’s preliminary injunction. Unless Arant can show material facts in dispute,
 16 summary judgment should be granted. At all stages in this case, Arant has not challenged
 17 the government’s facts, relying instead on frivolous tax-protestor arguments.

18 Under Rule 65, “any evidence received upon an application for a preliminary
 19 injunction which would be admissible upon the trial on the merits becomes part of the
 20 record on the trial and need not be repeated upon the trial.”²⁹ Here, the Court has already

21
 22 ²⁴*Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 247-48, 106 S.Ct. 2505, 91 L.Ed.2d
 23 202 (1986).

24 ²⁵*Id.*

25 ²⁶*Bender v. Southland Corp.*, 749 F.2d 1205, 1210-11 (6th Cir.1984).

26 ²⁷*Celotex*, 477 U.S. at 322-23 (1986).

27 ²⁸*Anderson*, 477 U.S. at 252 (holding that the non-moving party must produce more
 28 than a mere scintilla of evidence to survive summary judgment).

²⁹Fed.R.Civ.P. 65(a)(2).

1 heard the testimony of IRS revenue agent Killingsworth, who was subject to cross-
 2 examination at the preliminary-injunction hearing. The Court also received numerous
 3 Olympic documents that formed the basis for the preliminary injunction.

4 Although courts generally hold an evidentiary hearing before converting a
 5 preliminary injunction into a permanent injunction, “such a hearing is not necessary
 6 where no triable issues of fact are involved.”³⁰

7 The case of *United States v. Hargis*³¹ is directly on point. In that case, the court
 8 received substantial evidence as part of the preliminary-injunction hearing establishing
 9 that Hargis operated an illegal warehouse bank. The Court then granted the United
 10 State’s motion to convert the preliminary injunction to a permanent injunction based on
 11 the facts received at the preliminary-injunction hearing, as required under Rule 65. The
 12 Court also granted summary judgment because Hargis raised only legal issues in
 13 opposing summary-judgment. For the reasons set forth in *Hargis*, the Government’s
 14 motion for summary judgment should be granted, and this Court should convert the
 15 preliminary injunction into a permanent injunction barring Arant from operating his
 16 warehouse bank.

17 As the Court is aware from numerous pleadings in this case, Arant has not
 18 contested any of the facts supporting the government’s case. Instead, Arant has relied
 19 solely on frivolous legal arguments that there is no statutory authority to enjoin Arant for
 20 operating this bank. In granting the government’s motions for a temporary restraining
 21 order and a preliminary injunction, the Court has already rejected this argument.
 22 Because the facts are uncontested and the legal issues have already been resolved in the
 23 government’s favor, the United States’ summary-judgment motion should be granted.

24 Conclusion

25 ³⁰*United States v. McGee*, 714 F.2d 607, 613 (6th Cir. 1983); *see also Charlton v.*
 26 *Estate of Charlton*, 841 F.2d 988, 989 (9th Cir. 1988); *Fengler v. Numismatic*
 27 *Americana, Inc.*, 832 F.2d 745, 747 (2d Cir. 1987) (hearing is required for permanent
 28 injunction only if facts in dispute); *Socialist Workers Party v. Illinois State Bd. of*
Elections, 566 F.2d 586 (7th Cir. 1977), *aff’d on other grounds*, 440 U.S. 173 (1979).

³¹No. SACV04-273-DOC, 2004 WL 2830715 (C.D. Cal. Dec. 6, 2004).

1 Because material facts are undisputed, this Court should convert the preliminary
2 injunction to a permanent injunction and enter summary judgment.

3
4 Dated: February 5, 2008

JEFFREY C. SULLIVAN
United States Attorney

5 s/Michael R. Pahl
6 MICHAEL R. PAHL
7 Trial Attorney, Tax Division
8 U.S. Department of Justice
9 P.O. Box 7238, Ben Franklin Station
10 Washington, D.C. 20044
11 Telephone: (202) 514-6488
12 Fax: (202) 514-6770
13 michael.r.pahl@usdoj.gov
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28